

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLATSOP COUNTY,

Defendant.

Civil Action No. _____

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Corps of Engineers ("Corps"), filed the Complaint herein against Defendant Clatsop County, alleging that Defendant violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendant violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at the proposed North Coast Business Park, located in Warrenton, Clatsop County, Oregon (the "Site") and more fully described in the Complaint, without authorization by the United States Department of the Army, Corps of Engineers;

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendant, at its own expense and at the direction of the Corps, to restore and/or mitigate the damages that may have been caused by the alleged unlawful activities; and (3) to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, Defendant has constructed a road in waters of the United States on the Site, which road provides service to an existing State Detention Center and County Animal Shelter, and which could potentially be used to access other portions of the Site that are not currently developed;

WHEREAS, the full impact of the aforementioned road is not currently known, as that impact depends in part upon whether additional development or construction at the Site occurs in the future, regardless of whether any such additional development or construction occurs in waters of the United States;

WHEREAS, Defendant has placed fill material in water of the United States on the Site in connection with the construction and operation of the Clatsop County Animal Shelter;

WHEREAS this Consent Decree is intended to constitute (1) a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding the Site and (2) a complete and final resolution of any CWA § 404 permitting requirements for the road constructed at the Site, only insofar as said road is used exclusively to access the existing State Detention Center and County Animal Shelter;

WHEREAS, it is the Parties' intent that if the road constructed at the Site is used to access any portion of the Site (other than the existing State Detention Center and County Animal Shelter) for any potential construction or development at the Site, regardless of whether such proposed construction or development occurs in waters of the United States, then that road as it pertains to such construction or development shall require an individual CWA § 404 permit, and any such CWA permit process shall include the full consideration of the effects of the aforementioned road together with such proposed construction or development under the CWA;

WHEREAS, the United States and Defendant, without conceding liability, agree that

settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendant in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendant in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, without any admission of liability, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the United States District Court of Oregon pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendant conducts business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon

Defendant, its officers, directors, agents, employees and servants, its successors and assigns, any person, firm, association or corporation who is, or will be, acting in concert or participation with the Defendant, and any person, firm, association or corporation that may purchase, acquire, or otherwise control the property that is subject to this Consent Decree, whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns, any person, firm or corporation acting in concert or participation with the Defendant, or any person, firm or corporation that may purchase, acquire, or otherwise control the property that is subject to this Consent Decree, to take any actions necessary to comply with the provisions hereof.

5. The sale or transfer of ownership or other interest in any portion of the Site shall not alter or relieve Defendant of its obligation to comply with all of the terms of this Consent Decree. At least thirty (30) days prior to the sale and at least fifteen (15) days prior to the transfer of ownership or other interest in the Site, the party making such sale or transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify the Corps, and the United States Department of Justice at the addresses specified in Section IX below that such notice has been given. As a condition to any such sale or transfer, the Defendant making the sale or transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendant under CWA Section 301 concerning the Site.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Except as in accordance with this Consent Decree, Defendant and Defendant's agents, successors, assigns, and transferees are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. The parties acknowledge that CWA Nationwide Permit 32, found at 67 Fed. Reg. 2084 (Jan. 15, 2002), authorizes any dredged or fill material that was placed in waters of the United States as of January 1, 1999, in the areas that comprise the road constructed on the Site (as identified in Appendix B, Attachment B-1 (access road)), to remain in place (a) subject to the conditions provided in the Nationwide Permit and this Consent Decree and (b) only insofar as that road is used exclusively to access the existing State Detention Center and County Animal Shelter. Nothing in CWA Nationwide Permit 32 or this Consent Decree shall authorize under the CWA the dredged or fill material that comprises that road, to the extent that that road is used to access any portion of the Site (other than the existing State Detention Center and County Animal Shelter) for any potential construction or development at the Site. The parties further stipulate that, as a requirement of the CWA and this Consent Decree, if the road constructed at the Site is used to access any portion of the Site (other than the existing State Detention Center and County Animal Shelter) for any potential construction or development at the Site, regardless

of whether such proposed construction or development occurs in waters of the United States, then that road as it pertains to such proposed construction or development shall require an individual CWA § 404 permit. The Corps' consideration of such an application for a CWA permit shall include the full consideration of the effects of the aforementioned road together with the requirements of this Consent Decree and the effects of such proposed construction or development. Defendant stipulates that a condition of any such CWA § 404 permit that the Corps may issue is that the permit shall apply to the road only for purposes of the proposed construction or development for which the permit was sought, and not to the road as it pertains to any subsequent proposed construction or development, which under the preceding sentences shall require a separate individual CWA § 404 permit. The denial by the Corps of any such permit application shall in no way revoke or otherwise affect the terms of this Consent Decree, and this Consent Decree shall in no way revoke or otherwise affect any rights Defendant may otherwise have to appeal that permit decision.

10. The parties acknowledge that Nationwide Permit 32 (67 Fed. Reg. 2084), also authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the Restoration or Mitigation work required to be performed pursuant to Appendices A and B to this Consent Decree, and such discharges shall be subject to the conditions of the Nationwide Permit and this Consent Decree.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree

limit the Corps' ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

12. This Consent Decree in no way affects or relieves Defendant of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

13. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

14. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES

15. Defendant shall pay a civil penalty to the United States in the amount of twenty-five thousand dollars (\$25,000), within 30 days of entry of this Consent Decree.

16. Defendant shall make the above-referenced payment by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the Corps and the DOJ case number (90-5-1-1-16817). Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the United States District of Oregon. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

17. Upon payment of the civil penalty required by this Consent Decree, Defendant shall provide written notice, at the addresses specified in Section IX of this Consent Decree, that such payment was made in accordance with Paragraph 16.

18. Civil penalty payments pursuant to this Consent Decree (including stipulated

penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPS)

19. Clatsop County shall complete the Supplemental Environmental Projects specifically described in Appendix C (the "SEPs") in accordance with the Scope of Work contained in Appendix C, which is appended hereto and incorporated herein by reference. As set forth in Appendix C, the SEPs include the transfer of approximately 63 acres to the North Coast Land Conservancy for the preservation of that land and payment of \$16,600 to the North Coast Land Conservancy to manage that land.

20. Clatsop County shall complete the SEPs according to the schedules set forth in Appendix C.

21. Clatsop County hereby certifies that the SEPs are not required under any other state, local or federal law or regulation and that the SEPs are not to be implemented as a consequence of another agreement to which Clatsop County is a party. Clatsop County also certifies that it has not negotiated, is not presently negotiating, and will not in the future negotiate to initiate or complete the SEPs in response to any other local, state or federal enforcement action or in order to receive a grant from any entity.

22. Clatsop County hereby agrees not to claim any funds expended in the performance of the SEP as a deductible expense for purposes of any applicable local, state or Federal taxes.

RESTORATION, MITIGATION AND PRESERVATION

23. Defendant shall perform Mitigation and Restoration projects under the terms and conditions stated in Appendices A and B, which are appended hereto and incorporated herein by

reference.

24. Upon completion of the terms and conditions of Appendices A and B, Defendant shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any location identified in Appendices A and B, except as approved by the Corps.

25. To ensure that all parcels of land identified in Appendices A, B and C remain undisturbed, and that any purchaser or transferee has notice of this Consent Decree and its requirements, Defendant shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Recorder of Deeds Office, in Clatsop County, Oregon. Thereafter, each deed, title, or other instrument conveying an interest in any portion of the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

V. NOTICES AND OTHER SUBMISSIONS

26. Within 30 days after the deadline for completing any task set forth in Appendices A, B, and C of this Consent Decree, Defendant shall provide the United States with written notice, at the addresses specified in Section IX of this Consent Decree, of whether or not that task has been completed

27. If the required task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

28. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendant shall, by signature of a senior management official, certify such

notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

29. Until 10 years after entry of this Consent Decree, Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks in Appendices A, B and C, regardless of any public or county retention policy to the contrary. Until 10 years after entry of this Consent Decree, Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendices A, B and C.

30. At the conclusion of the document retention period, Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendant shall deliver any such records or documents to the Corps. The Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendant asserts such a privilege, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document,

record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

31. A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Defendant's premises to:

- 1) Monitor the activities required by this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples;
- 4) Inspect and evaluate Defendant's restoration and/or mitigation activities; and
- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

VI. DISPUTE RESOLUTION

32. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendant affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendant cannot be resolved by informal negotiations, then the position advanced by the United States shall be

considered binding unless, within thirty (30) days after the end of the informal negotiations period, the Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

33. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Defendant shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

34. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant under this Consent Decree, except as provided in Paragraph 42 below regarding payment of stipulated penalties.

VII. FORCE MAJEURE

35. Defendant shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event

arising from causes beyond the control of Defendant, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits (with the exception of such failure due to continued unreasonable delay by a permitting authority to make a permit decision where Defendant has sought such permit in a timely fashion).

36. If Defendant believes that a Force Majeure event has affected Defendant's ability to perform any action required under this Consent Decree, Defendant shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendant to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendant may also provide to the United States any additional information that it deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

37. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendant shall coordinate with the Corps to determine when to begin or resume the operations that had been affected by any Force Majeure event.

38. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VI of this Consent Decree.

39. Defendant shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendant and any entity controlled by Defendant, including its contractors and consultants; (2) that Defendant or any entity controlled by Defendant could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

VIII. STIPULATED PENALTIES

40. After entry of this Consent Decree, if Defendant fails to timely fulfill any requirement of the Consent Decree (including Appendices A, B and C), the Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- | | | |
|----|---|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$1000.00 per day |
| B. | For Day 31 up to and including
60 of non-compliance | \$2,000.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$3,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

41. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in Section VII shall be resolved upon motion to this Court as provided in Paragraphs 32 and 33.

42. The filing of a motion requesting that the Court resolve a dispute shall stay Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Defendant as provided in this Section.

43. To the extent Defendant demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 35 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

44. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

45. Defendant shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the Corps and the DOJ case

number (90-5-1-1-16817). Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the United States District of Oregon. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendant shall provide written notice, at the addresses specified in Section IX of this Decree.

IX. ADDRESSES

46. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO THE CORPS:

Misty Lactu, Assistant District Counsel
U.S.A.C.E.
Office of Counsel
P.O. Box 2946
Portland, Oregon 97208-2946

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

David J. Kaplan, Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

C. TO DEFENDANT:

Debra Kraske, Interim Clatsop County Administrator
Blair Henningsgaard, County Counsel
P.O. Box 179
Astoria Or 97103

X. COSTS OF SUIT

47. Each party to this Consent Decree shall bear its own costs and attorneys' fees in

this action. Should Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendant for noncompliance with or enforcement of this Consent Decree.

XI. PUBLIC COMMENT

48. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendant in writing that it no longer supports entry of the Consent Decree.

XII. CONTINUING JURISDICTION OF THE COURT

49. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIII. MODIFICATION

50. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Defendant and approved by the Court.

XIV. TERMINATION

51. Except for Paragraphs 9, 24-25 and 29-30, this Consent Decree may be terminated by either of the following:

A. Defendant and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendant may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Defendant has obtained and maintained compliance with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months;

2. Defendant has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Defendant has certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. within forty-five (45) days of receiving such certification from the Defendant, the Corps has not contested in writing that such compliance has been achieved. If the Corps disputes Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

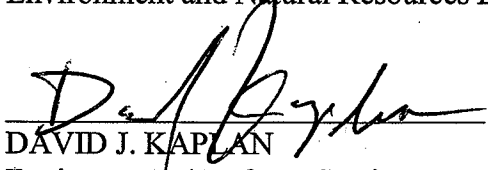
IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2003.

United States District Judge

ON BEHALF OF THE UNITED STATES:

Assistant Attorney General
Environment and Natural Resources Division



DAVID J. KAPLAN
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Dated: 1/7/04

FOR DEFENDANT CLATSOP COUNTY



FRANK M. FLYNN
Perkins, Coie
1211 S.W. Fifth Avenue, Suite 1500
Portland, OR 97204-3715

Dated: 11-6-03



HELEN WESTBROOK
Chair, Clatsop County Board of County
Commissioners
P.O. Box 179
Astoria Or 97103

Dated: 11-12-03



DEBRA KRASKE
Interim Clatsop County Administrator
P.O. Box 179
Astoria Or 97103

Dated: 11/7/03

APPENDIX A -- MITIGATION AND WETLAND RESTORATION PLAN

This document sets forth the mitigation and wetland restoration required of Clatsop County ("Defendant") at the Mitigation Sites and Wetland Restoration Site under this Consent Decree. The terms of this Appendix are incorporated into and set out binding provisions of the Consent Decree. This mitigation shall be carried out in accordance with all of the terms of the Consent Decree, including the terms set forth in this document below. Mitigation Sites are designated as Site A, Site B and Site C, while the Wetland Restoration Site is designated as Site D. The attached Diagrams A, B, C, and D (which are incorporated herein as binding provisions of the Consent Decree) depict the approximate location of each of these Sites, which are described in more detail below.

Required Terms:

I. Project Manager and Work Plan

Defendant shall use a consultant qualified and experienced in design and construction of wetland mitigation sites and restoration sites to serve as a project manager ("Project Manager"), to oversee and assist in the implementation of all mitigation at Sites A, B, and C and the wetland restoration at Site D. The proposed Project Manager will be reviewed and approved by the U.S. Army Corps of Engineers ("USACE"). Different Project Managers may be designated and used, subject to USACE approval, for Mitigation Sites A, B, and C and Wetland Restoration Site D, as described below. The relevant Project Manager(s) shall be present on site during all phases of construction of the particular Site for which he/she is designated, and shall supervise all construction.

Defendant's Project Manager(s) and other appropriate consultants shall prepare a "Mitigation and Restoration Work Plan," which will describe in detail the manner in which the mitigation and restoration required by this Consent Decree (as specifically set forth by the terms below) will be implemented and completed by Defendant. Defendant shall complete the Mitigation and Restoration Work Plan and submit it to USACE no later than February 1, 2004, for USACE review and approval. Defendant's consultants are encouraged to work with USACE in the preparation of the Mitigation and Restoration Work Plan to the extent possible. The USACE shall provide Defendant with a written explanation if it disapproves either the Mitigation and Restoration Work Plan submitted by Defendant or a component of that plan.

The Mitigation and Restoration Work Plan must include the necessary detail of the mitigation and restoration required by the Consent Decree (including this Appendix), with reference to each of the different Mitigation Sites and the Restoration Site, to permit adequate and meaningful review by USACE, including (but not limited to) the following items:

- A. The goals of the plan, the general methods to be used to achieve these goals, the sequence in which work will be completed, and the equipment used;
- B. The consultant(s) involved and Project Manager(s) responsible for each phase of the development of the mitigation and restoration plan and the implementation of that phase of the plan;
- C. Detailed sketches and plan views containing precise measurements for all phases of the mitigation and restoration;

D. A timetable for implementation of the mitigation and restoration plan, which includes all phases of mitigation and restoration;

E. Methods to be used to minimize adverse impacts to water quality and existing vegetation during the mitigation and restoration work, including (but not limited to) the soil erosion and sedimentation controls to be implemented at each site. If implementation of the work at the Site will first require a 1200-C erosion control permit from the Oregon Department of Environmental Quality for the work to be implemented at that Site, then those requirements of that permit shall be accepted as the required terms of the Mitigation and Restoration Work Plan for soil erosion control at that Site.

F. The species to be planted, replanted, and seeded, the density for such species, the location, and planting and post planting practices for the sections to be revegetated under the Consent Decree. The specific time period in which the revegetation will occur must be identified as well.

G. The location of stockpile and final disposal sites for excavated material removed from the mitigation sites and restoration site.

II. Mitigation Site A.

Site A is defined as four upland areas adjacent to wetland areas, as shown in attached Diagram A. The total area of Site A is 2.5 acres. The objective of mitigation at Site A is to excavate the upland areas to the same elevations as adjacent wetlands and establish wetland hydrology and vegetation similar to that in those adjacent wetlands.

A. Actions to Be Taken

1. Before earthmoving activities at Mitigation Site A are started, approved soil erosion and sedimentation controls (e.g., silt fence) shall be put in place slightly outboard of the boundaries of the Site. The soil erosion and sedimentation controls must remain in place and be in proper functioning condition during the entire removal process and until all plantings are completed. Removal of these soil erosion and sedimentation controls must first include the removal of all soil retained by these controls. This material shall be removed to an approved upland disposal site and placed in a manner that does not allow erosion of the material into wetlands or other waters.

2. Mitigation Site A shall be excavated to the same elevations as existing, adjacent wetland areas. Excess material shall be stockpiled in an approved upland site, if it will be reused in the near term, or hauled offsite and disposed of at an approved upland disposal site. The removed material shall be placed in a manner that does not allow erosion of the material into wetlands or other waters.

3. USACE shall be notified 30 days in advance of the date that excavation of the area will begin. USACE shall be allowed to be present during the time of the scheduled excavation. After excavation, and prior to the removal of any soil erosion and sedimentation control measures and prior to planting, USACE shall be notified so that an inspection of the site can be conducted to determine if the excavation of the site has been successful.

4. After approval of the excavation operation, the Site shall be planted and/or seeded with the wetland plant species and at the densities shown in the approved Mitigation and Restoration Work Plan. Plantings may consist of container stock or plug transplants and cuttings taken from adjacent wetland areas. Seed and container stock shall be from local or regional sources.

5. Earthmoving activities at the site shall be carried out between May 1 and October 31, 2004. Planting and seeding shall be completed by March 31, 2005.
6. Site A may be irrigated as necessary for the first three growing seasons following planting. The site shall not be irrigated during the fourth and fifth growing seasons after planting so that the long-term viability of the vegetation may be assessed.
7. Site A shall be protected from human disturbance (except for monitoring or mitigation maintenance activities) for the first five years after planting, or until success criteria are met, whichever is longer.
8. Within 30 days of the date that Defendant has completed its implementation of the Mitigation and Restoration Work Plan for Site A, the Defendant shall submit to the USACE "as-built" drawings of the work undertaken, together with a written description that identifies any aspect of the completed work that deviates from the Restoration Work Plan.

B. Success Criteria and Contingencies

The term "monitoring period" is defined as the months of May through August. The mitigation project at Site A will be deemed a success if at the end of the fifth monitoring period after construction and initial planting (i.e., the fifth August (VI.1. monitoring requirement)): 1) the Site meets the wetland criteria of the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (online edition)*; 2) the Site has the same hydrologic regime(s) as immediately adjacent wetland areas; and 3) the Site is vegetated with 80% or greater area coverage by wetland species native to the area and found in the immediately adjacent wetland areas. As interim benchmarks, mitigation in Site A will be determined a success to date if there is a wetland community on the restored area which has 50 percent and 65 percent vegetation coverage by native wetland species, respectively, at the end of the second and third monitoring periods following construction and initial planting.

If the interim benchmarks are not met, supplemental plantings will be required. If the success criteria are not met at the end of the fifth monitoring period after construction and initial planting, the mitigation work and monitoring shall be repeated until the success criteria are met.

III. Mitigation Site B.

Site B is defined as the gravel road extending from the northwest corner of the road constructed in 1997 north and then east to the southern end of SE Jetty Avenue. The portion to be removed extends approximately 1500 linear feet, from the northwest corner of the road built in 1997 to the western edge of a parking lot west of SE Jetty Avenue, as shown in attached Diagram B. This road was constructed in the early 1970s as part of the preparation of the site for construction of an aluminum smelter. Wetlands are present on one or both sides along much of the length of Site B, with the result that the road prevents the free exchange of water and aquatic organisms between those wetlands. The objective of the mitigation at Site B is to remove the existing roadbed to the same elevation as adjacent wetlands and establish wetland hydrology and vegetation similar to that in adjacent wetlands and hydrologic continuity between those adjacent wetlands.

A. Actions to Be Taken

1. Before earthmoving activities at Site B are started, approved soil erosion and sedimentation controls (e.g., silt fence) shall be put in place outboard of any roadside ditches and

any mounds of dredged material sidecast from the maintenance of those ditches. The soil erosion and sedimentation controls must remain in place and be in proper functioning condition during the entire removal process and until all plantings are completed. Removal of these soil erosion and sedimentation controls must first include the removal of all soil retained by these controls. This material shall be removed to an approved upland disposal site and placed in a manner that does not allow erosion of the material into wetlands or other waters.

2. Any existing mounds of dredged material sidecast from the maintenance of roadside drainage ditches shall be removed, so as to establish the same elevation as existing, adjacent wetland areas. The sidecast material may be used to fill those drainage ditches, as required by item 3 below.

3. Any roadside drainage ditches shall be filled to approximately the same elevation as existing, adjacent wetland areas in a manner that will facilitate the re-establishment of wetlands in this area. The ditches may be filled to a slightly higher elevation to allow for future subsidence of the material used to fill them.

4. The roadbed shall be removed to the same elevation as existing, adjacent wetland areas. Material not containing large amounts of gravel may be used to fill roadside drainage ditches, as required by item 3. Excess material shall be stockpiled in an approved upland site, if it will be reused in the near term, or hauled offsite and disposed of at an approved upland disposal site. The removed material shall be placed in a manner that does not allow erosion of the material into wetlands or other waters.

5. USACE shall be notified 30 days in advance of the date(s) of the scheduled removal of the road. USACE shall be allowed to be present during the time of the scheduled removal. After removal, and prior to the removal of any soil erosion and sedimentation control measures and prior to planting, USACE shall be notified so that an inspection of the site can be conducted to determine if the removal of the road material has been successful.

6. After approval of the road removal operation, the Site (including any filled ditches) shall be planted and/or seeded with the wetland plant species and at the densities shown in the approved Mitigation and Restoration Work Plan. Plantings may consist of container stock or plug transplants and cuttings taken from adjacent wetland areas. Seed and container stock shall be from local or regional sources.

7. Earthmoving activities at the site shall be carried out between May 1 and October 31, 2004. Planting and seeding shall be completed by March 31, 2005.

8. Site B may be irrigated as necessary for the first three growing seasons following planting. The site shall not be irrigated during the fourth and fifth growing seasons after planting so that the long-term viability of the vegetation may be assessed.

9. Site/B shall be protected from human disturbance (except for monitoring or mitigation maintenance activities) for the first five years after planting, or until success criteria are met, whichever is longer.

10. Within 30 days of the date that Defendant has completed its implementation of the Mitigation and Restoration Work Plan for Site B, the Defendant shall submit to the USACE "as-built" drawings of the work undertaken, together with a written description that identifies any aspect of the completed work that deviates from the Restoration Work Plan.

B. Success Criteria and Contingencies

The mitigation project at Site B will be deemed a success if at the end of the fifth monitoring period (i.e., the fifth August) after construction and initial planting: 1) the Site meets the wetland criteria of the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (online edition)*; 2) the Site has the same hydrologic regime(s) as immediately adjacent wetland areas; and 3) the Site is vegetated with 80% or greater area coverage by wetland species native to the area and found in the immediately adjacent wetland areas. As interim benchmarks, mitigation in Site B will be determined a success to date if there is a wetland community on the restored area which has 50 percent and 65 percent vegetation coverage by native wetland species, respectively, at the end of the second and third monitoring periods following construction and initial planting.

If the interim benchmarks are not met, supplemental plantings will be required. If the success criteria are not met at the end of the fifth monitoring period after construction and initial planting, the mitigation work and monitoring shall be repeated until the success criteria are met.

IV. Mitigation Site C.

Mitigation Site C is defined as a 1.3-acre wetland area at the headwaters of Skipanon Slough, in the northwest corner of the site, as shown in Diagram C. Site C has been disturbed by the deposition of sediment from adjacent hillsides, and by the discharge of appliances and other solid waste by local residents. The objective of the mitigation at Site C is to enhance the functions and values of the existing wetland by: 1) removing the solid waste which has been discharged there; 2) implementing measures to prevent the discharge of such solid waste in the future; 3) remove accumulated sediment; 4) implementing measures to reduce the rate of deposition of sediment in the future; and 5) restoring the plant community by removing undesirable vegetation and planting and/or seeding with native wetland vegetation.

A. Actions to Be Taken

1. All solid waste, including trash, appliances, and the like shall be removed from the site and disposed of at an approved location.
2. Before any earthmoving activities at Site C are started (including scraping of undesirable vegetation and removal of sediment), approved soil erosion and sedimentation controls (e.g., silt fence) shall be put in place to prevent the movement of material off the site. The soil erosion and sedimentation controls must remain in place and be in proper functioning condition during the entire removal process and until all plantings are completed. Removal of these soil erosion and sedimentation controls must first include the removal of all soil retained by these controls. This material shall be removed to an approved upland disposal site and placed in a manner that does not allow erosion of the material into wetlands or other waters.
3. Undesirable vegetation such as blackberries shall be removed from the site and steps taken to prevent their return. Methods to accomplish this can include mowing, scraping, and application of herbicides.
4. Permanent sedimentation and erosion controls measures shall be installed, and excessive sediment in the wetland area shall be removed. The excavated material shall be stockpiled in an approved upland site, if it will be reused in the near term, or hauled offsite and disposed of at an approved upland disposal site. The material shall be placed in a manner that does not allow erosion of the material into wetlands or other waters. Any in-stream work, such as removal of sediment from the channel, shall be carried out only between July 1 and September 15.

5. USACE shall be notified 30 days in advance of the date(s) of the scheduled installation of the sedimentation and erosion control measures and removal of sediment. USACE shall be allowed to be present during the time of the installation of sedimentation and erosion control measures and removal of sediment. After removal of sediment and prior to planting, USACE shall be notified so that an inspection of the site can be conducted to determine if the removal of the material has been successful.
6. After approval of the sedimentation and erosion control measures and the sediment removal operation, the Site shall be planted and/or seeded with the wetland plant species and at the densities shown in the approved Mitigation and Restoration Work Plan. Plantings may consist of container stock or plug transplants and cuttings taken from nearby wetland areas. Seed and container stock shall be from local sources.
7. Earthmoving activities at the site shall be carried out between July 1 and September 15, 2004. Planting and seeding shall be completed by March 31, 2005.
8. Site C may be irrigated as necessary for the first three growing seasons following planting. The site shall not be irrigated during the fourth and fifth growing seasons after planting so that the long-term viability of the vegetation may be assessed.
9. Site C shall be protected from human disturbance (except for monitoring or mitigation maintenance activities) for the first five years after planting, or until success criteria are met, whichever is longer. The Site shall be protected from the discharge of trash and solid waste for 20 years after planting.
10. Within 30 days of the date that Defendant has completed its implementation of the Restoration Work Plan for Site C, the Defendant shall submit to the USACE "as-built" drawings of the work undertaken, together with a written description that identifies any aspect of the completed work that deviates from the Restoration Work Plan.

B. Success Criteria and Contingencies

The mitigation project at Site C will be deemed a success if at the end of the fifth monitoring period (i.e., the fifth August) after construction and initial planting: 1) the Site meets the wetland criteria of the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (online edition)*; 2) the Site is vegetated with 80% or greater area coverage by wetland species native to the area; 3) solid waste is no longer deposited into the wetland; and 4) the deposition of sediment into the wetland has decreased to a minimal level. As interim benchmarks, Mitigation in Site C will be determined a success to date if there is a wetland community on the restored area which has 50 percent and 65 percent vegetation coverage by native wetland species, respectively, at the end of the second and third monitoring periods following construction and initial planting.

If the interim benchmarks are not met, supplemental plantings will be required. If the success criteria are not met at the end of the fifth monitoring period following construction and initial planting, the wetlands enhancement work shall be repeated as necessary until the success criteria are met.

V. Wetland Restoration Site D.

Site D is defined as an area immediately north of the southern leg of the access road constructed in 1997, and immediately west of the animal shelter parking lot, as shown in attached Diagram

D. The total area of Site D is approximately 0.1 acre. The objective of wetland restoration at Site D is to remove unauthorized fill material placed as part of the 1997 construction activity, by excavating the area to the same elevations as adjacent wetlands, and establish wetland hydrology and vegetation similar to that in those adjacent wetlands.

A. Actions to Be Taken

1. Before earthmoving activities at Wetland Restoration Site D are started, approved soil erosion and sedimentation controls (e.g., silt fence) shall be put in place slightly outboard of the boundaries of the site. The soil erosion and sedimentation controls must remain in place and be in proper functioning condition during the entire removal process and until all plantings are completed. Removal of these soil erosion and sedimentation controls must first include the removal of all soil retained by these controls. This material shall be removed to an approved upland disposal site and placed in a manner that does not allow erosion of the material into wetlands or other waters.
2. Unauthorized fill material shall be removed from Wetland Restoration Site D by excavating to the original surface soil, i.e., to the same elevations as existing, adjacent wetland areas. Excess material shall be stockpiled in an approved upland site, if it will be reused in the near term, or hauled offsite and disposed of at an approved upland disposal site. The removed material shall be placed in a manner that does not allow erosion of the material into wetlands or other waters.
3. USACE shall be notified 30 days in advance of the date that excavation of the area will begin. USACE shall be allowed to be present during the time of the scheduled excavation. After excavation, and prior to the removal of any soil erosion and sedimentation control measures and prior to planting, USACE shall be notified so that an inspection of the site can be conducted to determine if the excavation of the site has been successful.
4. After approval of the excavation operation, the site shall be planted and/or seeded with the wetland plant species and at the densities shown in the approved Mitigation and Restoration Work Plan. Plantings may consist of container stock or plug transplants and cuttings taken from adjacent wetland areas. Seed and container stock shall be from local or regional sources.
5. Earthmoving activities at the site shall be carried out between May 1 and October 31, 2004. Planting and seeding shall be completed by March 31, 2005.
6. Site D may be irrigated as necessary for the first three growing seasons following planting. The site shall not be irrigated during the fourth and fifth growing seasons after planting so that the long-term viability of the vegetation may be assessed.
7. Site D shall be protected from human disturbance (except for monitoring or maintenance activities) for the first five years after planting, or until success criteria are met, whichever is longer.
8. Within 30 days of the date that Defendant has completed its implementation of the Mitigation and Restoration Work Plan for Site D, the Defendant shall submit to the USACE "as-built" drawings of the work undertaken, together with a written description that identifies any aspect of the completed work that deviates from the Mitigation and Restoration Work Plan.

B. Success Criteria and Contingencies

The term "monitoring period" is defined as the months of May through August. The restoration

project at Site D will be deemed a success if at the end of the fifth monitoring period after construction and initial planting (i.e., the fifth August (VI.1. monitoring requirement)): 1) the site meets the wetland criteria of the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (online edition)*; 2) the site has the same hydrologic regime(s) as immediately adjacent wetland areas; and 3) the site is vegetated with 80% or greater area coverage by wetland species native to the area and found in the immediately adjacent wetland areas. As interim benchmarks, restoration in Site D will be determined a success to date if there is a wetland community on the restored area which has 50 percent and 65 percent vegetation coverage by native wetland species, respectively, at the end of the second and third monitoring periods following construction and initial planting.

If the interim benchmarks are not met, supplemental plantings will be required. If the success criteria are not met at the end of the fifth monitoring period after construction and initial planting, the restoration work and monitoring shall be repeated until the success criteria are met.

VI. Pest Species

Several pest species (e.g., noxious weeds) might create problems in the mitigation and restoration areas. Measures to address problems caused by pest species will be devised by Defendant, with the concurrence of USACE.

VII. Other Requirements

The following additional conditions shall apply to the Mitigation Sites and Restoration Site:

1. Monitoring of the hydrology and on the Mitigation Sites and Restoration Site shall be performed during May of the first two years following planting. Monitoring of vegetation on the Mitigation Sites and Restoration Site shall be performed during August for five years following planting. Photography from fixed points shall be included in the monitoring. If success criteria as defined in this Appendix have not been met by the end of the fifth year's monitoring, annual vegetation monitoring during August must continue until the success criteria are met.
2. A report shall be prepared and submitted to USACE within 30 days of each prescribed monitoring event. This report shall include photographic evidence as well as the monitoring results. This report shall identify any problems discovered and recommend appropriate corrective action(s) to ensure the success of mitigation and restoration. If monitoring reports show that hydrology or vegetation survival is not adequate to meet the success criteria, the property owner shall provide and implement a plan, once the plan is submitted to and approved by USACE, to remedy the unsuccessful revegetation effort.
4. The property owner shall notify, and allow for inspections by, USACE personnel or their designated agents after completion of excavation activities, after completion of planting activities, and whenever any corrective action(s) are proposed, and after monitoring indicates that the criteria for success have been attained.
5. Removal of excavated material and planting will be conducted in such a manner so as to minimize turbidity.
6. All fuel, oil and other hazardous materials shall be stored and equipment refueled away from wetlands and other waters.

7. All areas subject to erosion as a result of the mitigation and restoration activities, including the disposal of excavated material, shall be protected by suitable methods of erosion control

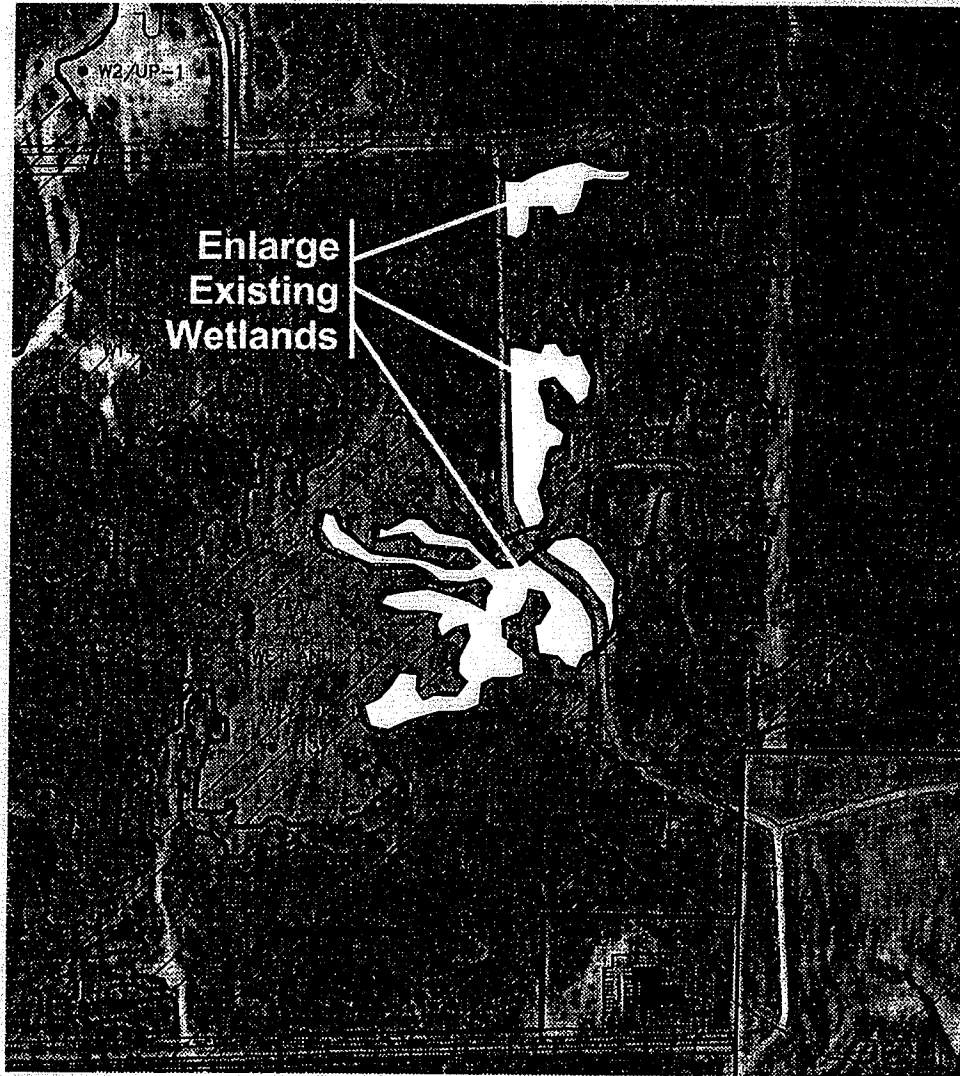
VIII. Schedule

The following schedule shall apply to this Mitigation and Restoration Work Plan

2003-2004	Winter	Meeting with USACE to review the Mitigation and Restoration Work Plan
2004	February 1	Submit Work Plan to USACE
	May 1-Oct 31	Conduct all work required in Sections II.A.1-3, III.A.1-5, IV.A.1-5, and V.A.1-3. (Earthmoving and in-stream work at Site C to be carried out between July 1 and Sept 15.)
		Field inspections by USACE or its representative, as required.
2005	By March 31	Planting and seeding of mitigation Sites A, B, C and restoration Site D completed.
2005	May	Monitor hydrology at all Mitigation Sites and Restoration Site
	By June 30	Detailed report of hydrology monitoring results submitted to USACE (within 30 days of monitoring).
	August	Monitor vegetation at all Mitigation Sites and Restoration Site
	By Sep 30	Detailed report of vegetation monitoring results submitted to USACE (within 30 days of monitoring). (Year 1 monitoring.)
2006	May	Monitor hydrology and vegetation at all Mitigation Sites and Restoration Site
	By June 30	Detailed report of hydrology and vegetation monitoring results submitted to USACE (within 30 days of monitoring).
	August	Monitor vegetation at all Mitigation Sites and Restoration Site
	By Sep 30	Detailed report of vegetation monitoring results submitted to USACE (within 30 days of monitoring). (Year 2 monitoring.)
2007	August	Monitor vegetation at all Mitigation Sites and Restoration Site
	By Sep 30	Detailed report of vegetation monitoring results submitted to USACE (within 30 days of monitoring). (Year 3 monitoring)
2008	August	Monitor vegetation at all Mitigation Sites and Restoration Site
	By Sep 30	Detailed report of vegetation monitoring results submitted to USACE (within 30 days of monitoring). (Year 4 monitoring)

2009	August	Monitor vegetation at all Mitigation Sites and Restoration Site
	By Sep 30	Detailed report of vegetation monitoring results submitted to USACE (within 30 days of monitoring). (Year 5 monitoring)

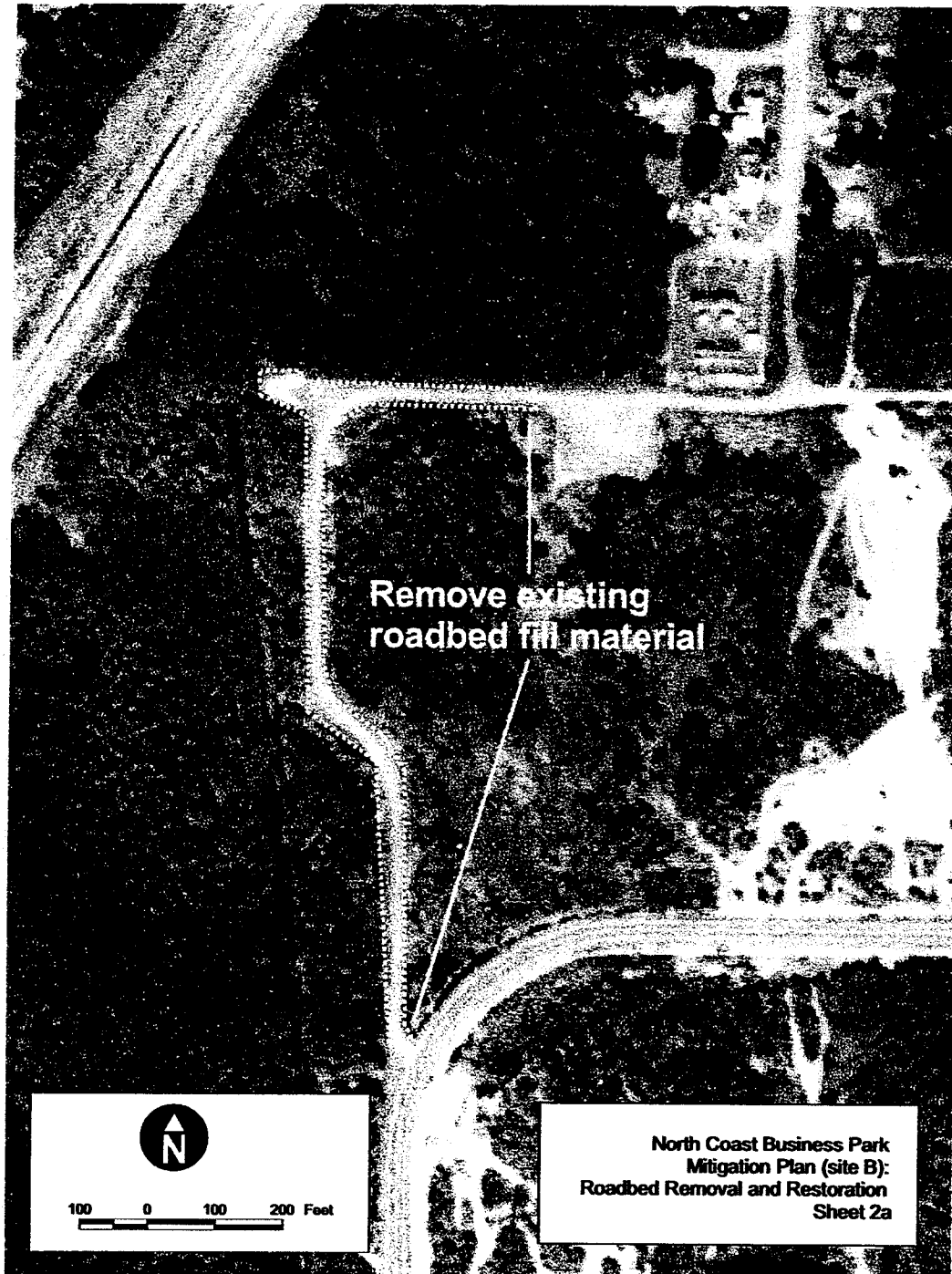
Diagram A



one inch
300 feet

North Coast Business Park
Mitigation Plan (site A):
Enlarge Existing Wetlands
Sheet 4a

Diagram B



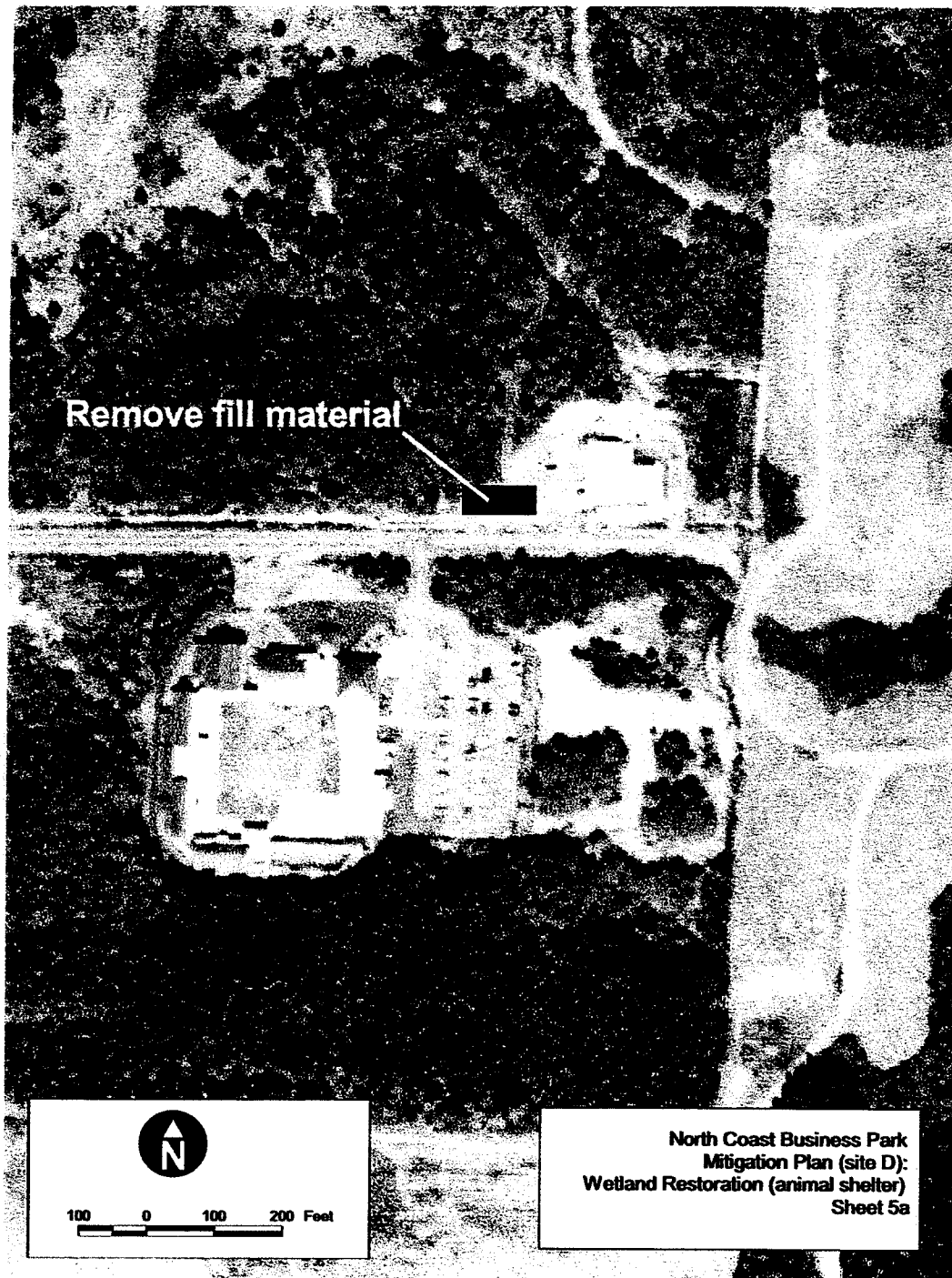
August 2000 aerial photography copyright Spencer B. Gross, Inc. All rights reserved.

Diagram C



August 200 aerial photography copyright Spencer B. Gross, Inc. All rights reserved.

Diagram D



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APPENDIX B – STORMWATER MANAGEMENT RESTORATION PLAN

This document sets forth the restoration measures required of Clatsop County (“Defendant”) under this Consent Decree. The terms of this Appendix are incorporated into and set out binding provisions of the Consent Decree. This restoration shall be carried out in accordance with all of the terms of the Consent Decree, including the terms set forth in this document below.

Required Terms:

I. Development of Stormwater Management Restoration Work Plan

Defendant shall use a consultant qualified and experienced in the development and implementation of the Stormwater Management Restoration Plan to serve as a project manager (“Project Manager”), to oversee and assist in the restoration of the access road and the animal shelter facility, by retrofitting stormwater management features to that access road and that animal shelter facility. The referenced access road and animal shelter facility subject to this Stormwater Management Restoration Plan are identified in Attachment B-1 (which is incorporated herein as binding provisions of the Consent Decree). The proposed project manager will be reviewed and approved by the U.S. Army Corps of Engineers (USACE).

Defendant’s Project Manager and other appropriate consultants shall prepare a detailed Stormwater Management Restoration Work Plan for the access road and the animal shelter facility that includes, among other things installing stormwater management features that ensure that a) stormwater contacting the access road or the animal shelter facility does not discharge into wetlands or other waters in a manner that would tend to result in a violation of the water quality standards of the State of Oregon, and b) the beneficial uses of the receiving waters are protected. The Plan shall be patterned after that used by Clean Water Services in Washington County, Oregon, or that used by the City of Portland Bureau of Environmental Services at the time the Consent Decree is executed by the Parties.

The completed Stormwater Management Restoration Work Plan will be reviewed by and subject to the approval of USACE, with additional review by the Oregon Department of Environmental Quality. The USACE shall provide Defendant with a written explanation if it disapproves either the Stormwater Management Restoration Work Plan submitted by Defendant or a component of that plan. The Plan and its implementation must, to the maximum extent practicable, avoid the construction of physical features (e.g., collection ditches, bioswales, retention ponds, and the like) in wetlands and other waters. Should any portion of the work required for that restoration need to be placed in wetlands or other waters recognized by the State of Oregon as waters of the State, Defendant shall, upon approval of the Stormwater Management Restoration Plan by USACE, obtain any necessary authorizations from the Oregon Division of State Lands.

The Stormwater Management Restoration Work Plan must include the necessary detail of the restoration required by the Consent Decree (including this Appendix), to permit adequate and meaningful review by USACE, including (but not limited to) the following items:

- A. The goals of the Stormwater Management Restoration Work Plan, the general methods to be used to achieve these goals, the sequence in which work will be completed, and the equipment used;

- B. The consultant(s) involved and Project Manager(s) responsible for each phase of the development of the Stormwater Management Restoration Work Plan and the implementation of that phase of that plan;
- C. Detailed sketches and plan views showing the existing system of ditches receiving stormwater from the access road and the animal shelter facility and any existing stormwater management features;
- D. Detailed sketches and plan views, containing precise measurements, for all features of the restoration, including the post-restoration ditch system;
- E. A timetable for implementation of the Stormwater Management Restoration Work Plan, which includes all phases of restoration;
- F. Methods to be used to minimize adverse impacts to water quality and existing vegetation during the restoration work, including (but not limited to) the soil erosion and sedimentation controls to be implemented at each site. If implementation of the work at a site will first require a 1200-C erosion control permit from the Oregon Department of Environmental Quality for the work to be implemented at that site, then the requirements of that permit shall be accepted as the required terms of the Stormwater Management Restoration Work Plan for soil erosion and sedimentation control at that site.
- G. For any vegetation used as part of the Stormwater Management Restoration Work Plan, the species to be planted, replanted, and seeded, the density for such species, the location, and planting and post planting practices;
- H. The location of stockpile and final disposal sites for excavated material removed as part of the restoration;
- I. A detailed performance monitoring plan, specifying what water quality parameters will be measured, and how, when and where they will be measured. For those stormwater management features associated with the restoration of the access road and the animal shelter facility, the plan must provide sufficient information to allow for a determination of whether the restoration success criteria in item II.B. below have been met.

II. Restoration of Access Road and Animal Shelter Facility

A. Actions to Be Taken

1. Upon approval of the Stormwater Management Restoration Work Plan by USACE, and after obtaining any necessary authorization from the Oregon Division of State Lands, Defendant shall install the stormwater management features specified in that Stormwater Management Restoration Work Plan, in accordance with the schedule contained in this appendix.
2. Before any necessary earthmoving activities are started, approved soil erosion and sedimentation controls (e.g., silt fence) shall be put in place. These soil erosion and sedimentation controls must remain in place and be in proper functioning condition during the entire restoration process and until any necessary plantings are completed. Removal of these soil erosion and sedimentation controls must first include the removal of all soil retained by these controls. This material shall be removed to an approved upland disposal site and placed in a manner that does not allow erosion of the material into wetlands or other waters.

3. USACE shall be notified 30 days in advance of the date that restoration of the road and the animal shelter facility will begin. USACE shall be allowed to be present during the time of the scheduled restoration. After restoration, and prior to the removal of any soil erosion and sedimentation control measures, USACE shall be notified so that an inspection of the site can be conducted to determine if the restoration of the site has been successful.

4. Earthmoving activities associated with the restoration shall be carried out between May 1 and September 30, 2004. Planting and seeding shall be completed by October 31, 2004.

5. Within 30 days of the date that Defendant has completed its implementation of the Stormwater Management Restoration Work Plan, the Defendant shall submit to the USACE "as-built" drawings of the work undertaken, together with a written description that identifies any aspect of the completed work that deviates from the Stormwater Management Restoration Work Plan.

B. Success Criteria and Contingencies

The restoration activity for the access road and the animal shelter facility will be deemed a success if, for a 2-year-recurrence, 24-hour precipitation event, the system captures and treats 70% of the stormwater from the access road and the animal shelter facility in such a manner that Oregon water quality standards are not violated and beneficial uses are protected in the receiving waters.

If the success criteria are not met, Defendant shall submit a plan for remedial actions to be taken to modify or expand the system to ensure that the criteria are met. That plan will be reviewed and subject to approval by USACE, with additional review from the Oregon Department of Environmental Quality. Upon approval, Defendant shall implement that plan. Monitoring shall be repeated until it is clear that the success criteria are met.

III. Other Restoration Requirements

The following additional conditions shall apply to the restoration activity:

1. Monitoring of the performance of the installed stormwater management features shall be carried out from November 1, 2004 through April 30, 2005, and again from November 1, 2005 through April 30, 2006. During each of those periods Defendant shall inspect and document the performance of the stormwater management features after each significant rainfall event. Data gathered shall be sufficient to demonstrate the success or failure of the stormwater management features to meet the success criteria. Photography from fixed points shall be included in the monitoring.

2. A report shall be prepared and submitted to USACE by June 30, 2005 and June 30, 2006, describing performance of the stormwater management features during the previous monitoring period. The report shall include monitoring results for at least the six largest 24-hour rainfall events occurring during the previous monitoring period. The report shall contain detail sufficient to demonstrate the success or failure of the restoration effort to meet the success criteria and shall include photographic evidence as well as the monitoring results. The report shall identify any problems discovered and recommend appropriate corrective action(s) to ensure the success of the restoration.

3. Defendant shall notify, and allow for inspections by, USACE personnel or their designated agents after completion of restoration activities, after completion of any planting activities, whenever any corrective action(s) are proposed, and after monitoring indicates that the criteria for success have been attained.

4. Removal of excavated material and planting will be conducted in such a manner so as to minimize turbidity.

5. All fuel, oil and other hazardous materials shall be stored and equipment refueled away from wetlands and other waters.

6. All areas subject to erosion as a result of the restoration activities, including the disposal of excavated material, shall be protected by suitable methods of erosion control.

IV. Restoration Schedule

The following schedule shall apply to the development and implementation of the Stormwater Management Restoration Work Plan:

2003- 2004	Winter	Meeting with USACE to review the Restoration Work Plan
2004	February 1	Submit Stormwater Management Restoration Work Plan to USACE
	May 1 - Sep 30	Conduct all earthwork required to implement the Stormwater Management Restoration Work Plan
	By Oct 31	Finish all planting and seeding of any vegetation required by the Stormwater Management Restoration Work Plan
		Field inspections by USACE or its representative, as required.
2004 2005	Nov 1 thru Apr 30	Monitor effectiveness of stormwater management measures on access road and animal shelter facility
2005	By June 30	Detailed report of stormwater management effectiveness monitoring results submitted to USACE
2005 2006	Nov 1 thru Apr 30	Monitor effectiveness of stormwater management measures on access road and animal shelter facility
2006	By June 30	Detailed report of stormwater management effectiveness monitoring results submitted to USACE

Appendix B
Attachment B-1



APPENDIX C – SUPPLEMENTAL ENVIRONMENTAL PROJECTS

This document sets forth the supplemental environmental projects (SEPs) required by Clatsop County ("Defendant") under this Consent Decree. The terms of this Appendix are incorporated into and set out binding provisions of the Consent Decree. The SEPs shall be carried out in accordance with all of the terms of the Consent Decree, including the terms set forth in this document below. Each SEP is designated as Site A, Site B, Site C, and Site D, and Attachment 1 contains the legal descriptions for each site. The attached legal descriptions are incorporated into and set out binding provisions of the Consent Decree.

Required Terms:

I. SEP Site A – Wolf Bay Wetlands.

The legal description for Site A is contained in Attachment 1. The site is 12.05 acres.

A. Actions to Be Taken

1. Fee title to Site A will be conveyed to the North Coast Land Conservancy (NCLC) by December 15, 2003, in accordance with NCLC requirements. The deed transferring Site A to NCLC shall require that the site is used as open space or natural area for perpetual public use. In the event the site reverts back to Clatsop County, the County shall contact the Corps to negotiate alternative means to provide the same level of protection and preservation of Site A required by the Consent Decree.

2. Within 15 days after the conveyance of the property, the Corps of Engineers will be notified that the conveyance has occurred.

B. Success Criteria and Contingencies

The SEP at Site A will be deemed a success upon transfer of land ownership from Clatsop County to the NCLC.

II. SEP Site B – Wild Ace Lake.

The legal description for Site B is contained in Attachment 1. The site is 39.08 acres.

A. Actions to Be Taken

1. Fee title to Site B will be conveyed to the North Coast Land Conservancy (NCLC) by December 15, 2003, in accordance with NCLC requirements. The deed transferring Site B to NCLC shall require that the site is used as open space or natural area for perpetual public use. In the event the site reverts back to Clatsop County, the County shall contact the Corps to negotiate alternative means to provide the same level of protection and preservation of Site A required by the Consent Decree.

2. Within 15 days after the conveyance of the property, the Corps of Engineers will be notified that the conveyance has occurred.

B. Success Criteria and Contingencies

The SEP at Site B will be deemed a success upon transfer of land ownership from Clatsop County to the NCLC.

III. SEP Site C – John Day River Marsh.

The legal description for Site C is contained in Attachment 1. The site consists of sixteen parcels with a total area of 24.58 acres.

A. Actions to Be Taken

1. Fee title to Site C will be conveyed to the North Coast Land Conservancy (NCLC) by December 15, 2003, in accordance with NCLC requirements. The deed transferring Site C to NCLC shall require that the site is used as open space or natural area for perpetual public use. In the event the site reverts back to Clatsop County, the County shall contact the Corps to negotiate alternative means to provide the same level of protection and preservation of Site A required by the Consent Decree.

2. Within 15 days after the conveyance of the property, the Corps of Engineers will be notified that the conveyance has occurred.

B. Success Criteria and Contingencies

The SEP at Site C will be deemed a success upon transfer of land ownership from Clatsop County to the NCLC.

IV. SEP Site D – Delaura Beach Road

The legal description for Site D is contained in Attachment 1. The site consists of six parcels with a total area of 7.3 acres.

A. Actions to Be Taken

1. Fee title to Site D will be conveyed to the North Coast Land Conservancy (NCLC) by December 15, 2003, in accordance with NCLC requirements. The deed transferring Site D to NCLC shall require that the site is used as open space or natural area for perpetual public use. In the event the site reverts back to Clatsop County, the County shall contact the Corps to negotiate alternative means to provide the same level of protection and preservation of Site A required by the Consent Decree.

2. Within 15 days after the conveyance of the property, the Corps of Engineers will be notified that the conveyance has occurred.

B. Success Criteria and Contingencies

The SEP at Site D will be deemed a success upon transfer of land ownership from Clatsop County to the NCLC.

V. Payment to NCLC

A Actions to Be Taken

1. Payment of \$16,600 to NCLC to manage the preservation of Sites A, B, C and D, by December 15, 2003, in accordance with NCLC requirements.

2. Within 15 days after payment, the Corps of Engineers will be notified that the payment has occurred.

B Success Criteria and Contingencies

The payment requirement will be deemed a success upon the transfer of funds from Clatsop County to the NCLC.

VI. Schedule

The following schedule shall apply to this SEP Plan

2003 by Dec. 15 Conveyance of Sites A-D and payment from Clatsop County to NCLC completed

by Dec. 31 Notification to USACE that conveyances of Sites A-D and payment are completed

ATTACHMENT 1 to APPENDIX C

LEGAL DESCRIPTIONS:

Map 80820, tax lot 200 - SEP Site A-Wolf Bay Wetlands

Starting at the Southeast corner of Gov. Lot 2, Section 20, Township 8 North, Range 8 West, Willamette Meridian, Oregon, thence North along the easterly line of said Lot 2, 495 feet to the point of beginning;

Thence West 330 feet;

Thence North 495 feet;

Thence West 330 feet;

Thence North to the meander line in Section 17 fronting Gov. Lot 2, Section 20, Township 8 North, Range 8 West, Willamette Meridian, Oregon;

Thence Easterly along the meander line to the Easterly line fronting Gov. Lot 2;

Thence South to the Northeast corner of said Lot 2;

Thence South along the Easterly line of Lot 2 to the point of beginning

Map 81029, tax lot 200 - SEP Site B-Wild Ace Lake

Commencing at the point of intersection of the center line of County Road No. 61 (Road Plat Book No. 2, Page 107) with the division line of the W. Hobson and W. H. Gray Donation Land Claim, being also the Northwest corner of a certain tract of land conveyed by Frank C. and Phema R. Hess to the City of Astoria and recorded in Book 122, page 96 in Clatsop County Deed Records;

Thence following said center line of said County Road in the Southerly direction to the Southeast corner of a certain six and one-half acre tract of land conveyed by Clatsop County to Frank C. & Phema R. Hesse and Max J. and Emma k. Berg as per deed recorded in Book 133, page 358 of the Clatsop County Deed Records;

Thence in a Westerly direction and coincident with the South line of said six and one-half acre tract to its point of intersection with the East line of Ridge Road (being an unnumbered County Road;)

Thence in a Northerly direction and coincident with the East line of said Ridge Road to its point of intersection with said aforementioned Land Claim's division line;

Thence in an Easterly direction and coincident with said Land Claim's division line to the place of beginning, being parts of Section 20 and 29, Township 8 North, Range 10 West, Willamette Meridian, Clatsop County, Oregon.

Map 80819, tax lots 9400, 9500, 11900, 14600, 14700, 14800, 14900, 15100, 15200, 15300, 15400, 15600, 16000, 16100, 16300 & 16600 - SEP Site C-John Day River Marsh

Lots 1 through 24, Block 7,

Lots 1 through 24, Block 8,

Lots 7 through 18, Block 9,

Lots 1 through 19, Block 21,

Lots 1 through 24, Block 22, North Pacific Addition to Astoria, in the County of Clatsop, State of Oregon and

Lots 1 through 20, Block 1,

Lots 1 through 48, Block 2,
Lots 1 through 48, Block 3,
All of Block 4,
Lots 1 through 48, Block 6,
Lots 1 through 48, Block 7,
Lots 1 through 44, Block 8,
Lots 1 through 25, Block 9,
Lots 1 through 48, Block 11,
Lots 14 & 15, Block 13,
Lots 1 through 48, Block 14,
Lots 1 through 13, Block 16,
Lots 20 through 25, Block 19,
Astor Addition to Astoria, County of Clatsop, State of Oregon.

Map 81028BD, tax lots 400, 500, 600, 700, 1400 & 1500 - **SEP Site D-Delaura Beach**
Road Wetlands (a.k.a. Cedar Loop Wetlands)
Lots 1 through 32, Block 2,
Lots 1 through 32, Block 3,
Lots 1 through 32, Block 10,
Lots 1 through 3 and Lots 5 through 32, Block 11,
Hollywood Park, in the county of Clatsop, State of Oregon.